

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CARL WHITEHEAD,

Plaintiff,

v.

COMMONWEALTH OF
PENNSYLVANIA DEPARTMENT OF
CORRECTIONS SECRETARY JOHN E.
WETZEL; DORINA VARNER; JAMES
C. BARNCLE; DENISE THOMAS;
BARRY GRUBB; GERALD L. ROZUM;
DANIEL GEHLMANN; MELISSA
HAINSWORTH; ALLEN G. JOSEPH;
CAPT. BAKOS; LT. BARBARICH; C/O
COPHENOUR; C/O BOWMAN; C/O
SLEDGE; LT. CLIPPENGER; DIANE
KOLESOR; JOSEPH DUPONT; LT.
CINKO; C/O EHRHART; JOSEPH
BIANCONI; ROBIN M. LEWIS; DR.
RASHIDA MAHMUD; and DARLENE
CHANEY, sued both jointly and severally
in both their individual and official
capacities,

Defendants.

Civil Action No. 3:14-cv-51

United States District Judge
Kim R. Gibson

United States Magistrate Judge
Cynthia Reed Eddy

MEMORANDUM ORDER

KIM R. GIBSON, United States District Judge.

The present action was initiated in this Court on March 19, 2014. The case was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with Magistrate Judges Act, 28 U.S.C. § 636(b)(1) and Local Rules of Court 72.C and 72.D.

Plaintiff filed an amended complaint on October 7, 2015. [ECF No. 85]. Shortly thereafter, Defendants filed two motions to dismiss. The first motion was filed by all of the Defendants except for Dr. Rashida Mahmud ("Commonwealth Defendants"). [ECF No. 86]. The second motion was filed by Dr. Mahmud. [ECF No. 88]. Magistrate Judge Eddy issued a

Report and Recommendation on June 2, 2016, which recommended that both motions be granted in part and denied in part. [ECF No. 91]. Service of the Report and Recommendation was made on all parties. The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Civil Rules of Court, they had until June 20, 2016 to file any objections. To date, no objections have been filed. Accordingly, after a *de novo* review of the pleadings and documents in this case, together with the Report and Recommendation, the following Order is entered:

AND NOW, this 27th day of June, 2016, **IT IS HEREBY ORDERED** that the Commonwealth Defendants' motion to dismiss [ECF No. 86] is granted in part and denied in part, as follows:

1. **GRANTED** as to all claims against the following sixteen Defendants: Wetzel, Varner, Barnacle, Grubb, Rozum, Gehlmann, Hainsworth, Joseph, Barbarich, Cophenour, Bowman, Sledge, Clippenger, Kolesor, Lewis, and Chaney. These Defendants are hereby dismissed from this action;
2. **GRANTED** as to all claims asserting violations of the Procedural Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and 42 U.S.C. §§ 1985(3), 1986; and
3. **DENIED** as to the following claims:
 - a. Eighth Amendment claims for denial of the bottom bunk against Defendants Thomas, Bianconi, Cinko, and Ehrhart;
 - b. Eighth Amendment claim for denial of an off-site MRI against Defendant Thomas; and
 - c. First Amendment retaliation claims against Defendants Cinko, Ehrhart,

Bianconi, Bakos, Dupont.


IT IS FURTHER ORDERED that Defendant Dr. Rashida Mahmud's motion to dismiss [ECF No. 88] be granted in part and denied in part, as follows:

1. **GRANTED** as to claims against Dr. Mahmud associated with the daily \$5.00 co-pay deduction during Plaintiff's hunger strike;
2. **GRANTED** as to all claims asserting violations of the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. §§ 1985(3), 1986;
3. **DENIED** as to the Eighth Amendment claim related to the lack of provision of an off-site MRI.

IT IS FURTHER ORDERED that the Report and Recommendation [ECF No. 91] of Magistrate Judge Eddy is hereby **ADOPTED** as the Opinion of the District Court.

IT IS FURTHER ORDERED that the case is remanded to Magistrate Judge Eddy for all further pretrial proceedings.

By the Court



Kim R. Gibson
United States District Judge

cc: **Magistrate Judge Cynthia Reed Eddy**
(electronic notification via CM-ECF)

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